



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

December 29, 1994

Ms. Elaine L. Fannin  
Assistant General Counsel  
Texas Department of Agriculture  
P.O. Box 12487  
Austin, Texas 78711

OR94-843

Dear Ms. Fannin:

You have asked whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 29506.

The Texas Department of Agriculture (the "department") received a request for information about a pesticide incident investigated by the department. You indicate that the investigation file may not yet be complete. We note that an open records request applies only to information in existence when the request is received. Open Records Decision No. 452 (1986) at 3. However, the department has submitted for review information that is responsive to the request. The department contends that these documents are excepted from disclosure under section 552.103(a).

To show the applicability of section 552.103(a), a governmental entity must show that (1) litigation in a judicial or quasi-judicial proceeding is pending or reasonably anticipated and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. The documents submitted to this office indicate that litigation is reasonably anticipated. Our review of the documents shows that they are related to that anticipated litigation. However, we note that some of the records at issue have already been seen by the opposing party to the anticipated litigation.

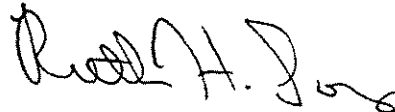
Generally, once information has been obtained by all parties to the anticipated litigation, no section 552.103(a) interest exists with respect to that information. Open Records Decision No. 349 (1982) at 2. If the opposing party in the pending litigation has

already seen some of the records at issue, there would be no justification for now withholding those records from the requestor pursuant to section 552.103(a). We have marked records that it appears the opposing party has already seen. To the extent that the opposing party to the anticipated litigation has not already seen the other records at issue, these may be withheld from disclosure under section 552.103(a).

We note that the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982) at 3. Also, since the section 552.103(a) exception is discretionary with the governmental entity asserting the exception, it is within the department's discretion to release this information to the requestor. Gov't Code § 552.007; Open Records Decision No. 542 (1990) at 4.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy  
Assistant Attorney General  
Open Government Section

RHS/rho

Ref.: ID# 29506

Enclosures: Submitted documents

cc: Mr. George C. Gonzalez  
Rt. 1, Box 13  
Conception, Texas 78349  
(w/o enclosures)